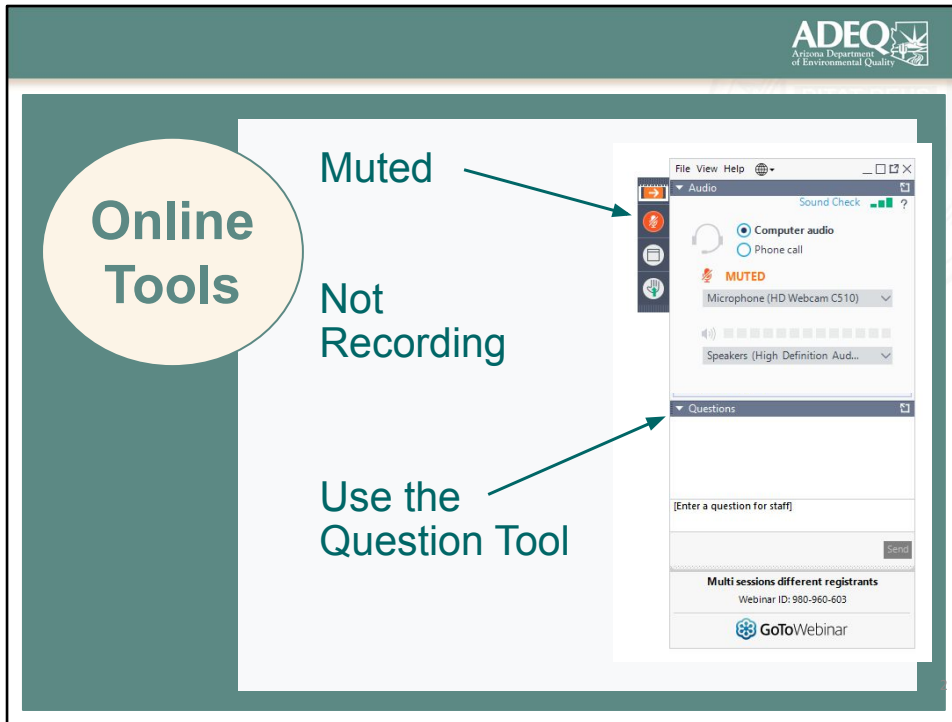




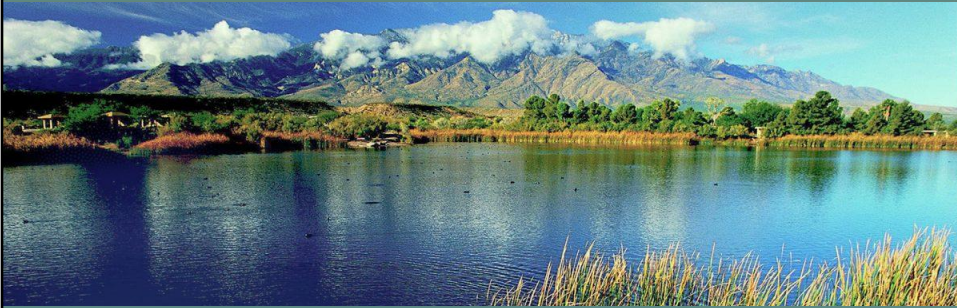
No Lines Here!

- Lelsz is counting down and running slides
- All lines in italics must be read!



David Lelsz

- Good afternoon everyone and welcome to this webinar on Arizona's Surface Water Protection Program and an introduction to our Stakeholder
- My name is David Lelsz and I am the Program Manager for the new Surface Water Protection Program
- Let's have a brief on the Got To Meeting Tools we are using today!
 - Join Muted
 - Not recording although the presentation and question log from the meeting will be posted on our website, likely within 48 hours of the session
 - There will be a Q and A session the Surface Water Protection Program implementation at the end of the session
- *Now, please allow me to introduce Mr. Trevor Baggione, Director of Water Quality Programs at ADEQ.*



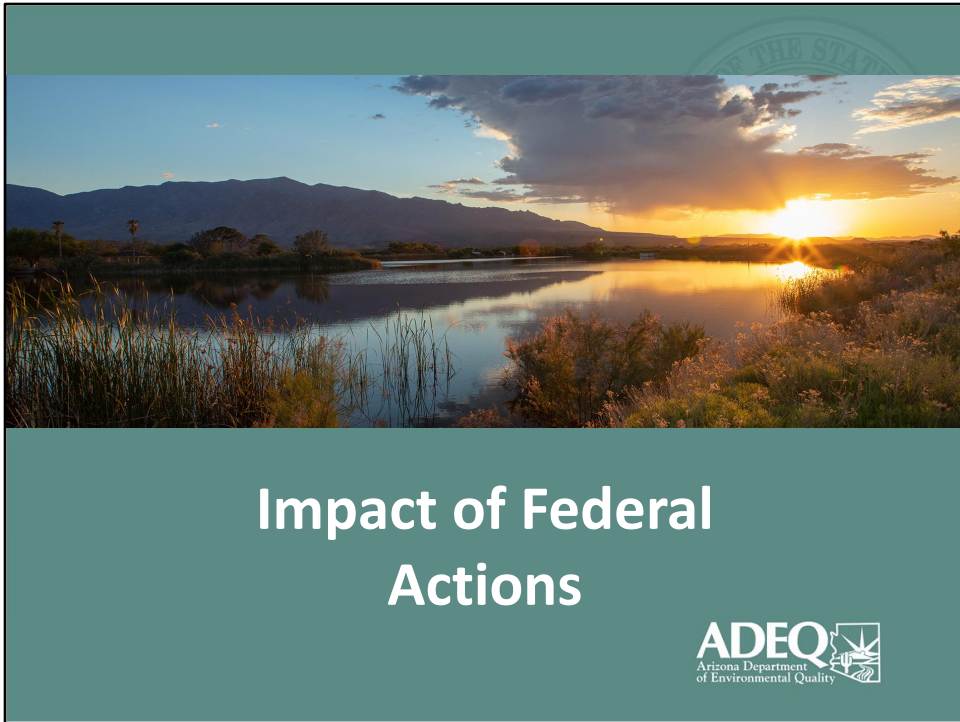
Meeting Purpose:

Share ADEQ approach to implementing State Surface Water Program and opportunities for participation.

Trevor Baggiore

(Slow down! Pause after making a key point! Repeat/restate key points! Breath! Bring in levity when you are able!)

- Thank you for attending
- The creation of the state surface water protection program was a milestone for the agency and the community
- It provides us the flexibility to ensure our waters are protected no matter the decisions at the federal level
- This is an informational webinar to
 - inform you the approach and timeline the agency is taking to implement HB 2691
 - answer your questions about the process and path forward
- We will not be taking comment on the outcome of the legislative process. State leadedr has determined what the program should be and we are writing the rules to implement that program.
- Not debating what was left out
- *Before we get to the planned meeting purpose for this meeting, I would like to address the “elephant in the room”*



Trevor Baggione

- I am sure many of you, just like I do, have many questions about how the pending federal actions regarding the NWPR will affect you, your permits, waters in Arizona, the SWPP and ADEQ actions.
- *Here is what we know*

Federal Developments

June 9, 2021
EPA and Army Corps announce new rulemaking

July 30th, 2021
Announced intent to repeal NWPR in 2021 and redefine WOTUS in 2022

August 4, 2021
Intent published in register




Trevor Baggione (Moved from Erin's discussion to Trevor's opening)

- On June 9 of this year, the new administration announced it will repeal the NWPR, stating “this rule (NWPR) is leading to significant environmental degradation.”
- The administration has communicated that it’s goal is to develop a process that,
 - “restores the protections in place prior to the 2015 WOTUS implementation and
 - develops a new rule to establish a durable definition of “waters of the United States.”
- ADEQ cannot predict timelines for federal rulemaking, but the EPA expects they will complete their NWPR repeal by the end of the year. Whether or not that action is stayed pursuant to litigation is something ADEQ will be paying attention to.
- In the meantime, beginning on September 29, a defined list of waterbodies will be protected by the Surface Water Protection Program

Here is what we don't know.....

UNCERTAINTY IN EPA REPEAL ACTION
ADEQ
Arizona Department
of Environmental Quality

<https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>

* For illustrative purposes only. Proposed jurisdictional waters in **bold**.

Trevor Baggione

- There are multiple repeal actions the EPA may take.
- ADEQ does not have inside information on the what the “world of regulation” will look like post-repeal
- ADEQ expects that EPA will issue new guidance for implementing a version of the “significant nexus” test from Justice Kennedy’s concurring opinion in the *Rapanos* case. Once again - *this is pure speculation*.
- If you want to monitor EPA actions we have added the website link to this slide.
- You have the opportunity to comment by going to the website
- *Even though we may not know what the repeal will be or when it will be - We DO know it is going to happen - So what are we going to do?*

ADEQ Actions

Tracking the Process

Engaging when possible

Flow Regime Analysis

Continue gathering data

Permitting

Identifying options

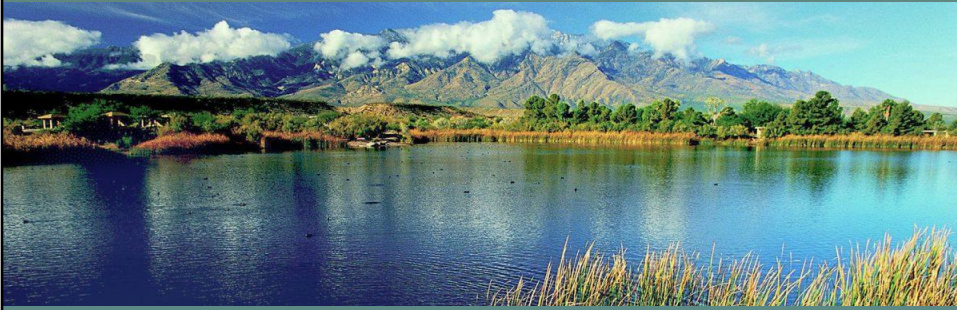
SWPP Implementation

Still mandated



Trevor Baggione

- Although we have a high level of uncertainty, our team members have started planning for the coming changes
- Our team is meeting frequently with the EPA, we are preparing a response, we are monitoring the changes
- We have a dedicated team that is working every day on updating the flow regime data and using a toolkit to evaluate which are WOTUS or state protected waters. We will continue the data collection, which will be needed no matter the direction, and will shift our evaluation of waters to follow any change in federal rules and guidance.
- The permit team is also working with the Attorney General's office to identify potential options for issuing permits between now and the repeal.
- And we will remain focused on establishing the SWPP program in rule as mandated by the legislature.
- We have been getting many questions why are we moving forward with the state program when all waters in the state program may become WOTUS.
 - We are still mandated
 - There are still waters to be protected
 - *The state program sets a baseline*



Arizona's Surface Water Protection Program

Trevor Baggione

- I hope my comments added a bit of clarity to a very confusing and constantly changing situation
- We understand you have concerns about this lack of clarity and want to know if you do or don't need a permit
- Unfortunately that question for now may change each day
- We will provide as much information as we can but have patience as we too are having to adjust daily
- *So, now I am going to turn it over to Justin Bern, Value Stream Manager for Surface Water Protection, to review the agenda for the rest of this meeting*

Agenda

History

Program Structure

Rulemaking Approach

Schedule



Justin Bern

(Slow down! Pause after making a key point! Repeat/restate key points! Breath! Bring in levity when you are able!)

- Thank you for joining us today.
- During this presentation, we will be providing an overview the new state surface water protection program currently in development after legislative approval was granted in late spring of this year, and
- Finally, we will discuss our approach to rulemaking and the schedule.
- *First some background into why we are here today.*

Federal Navigable Water Protection Rule

(NWPR)

300+ Arizona waters left
unprotected

- Santa Fe Reservoir, Williams
- Roper Lake, Safford
- Watson Lake, Prescott
- Woods Canyon Lake, Payson



12

Justin Bern

- The EPA's Navigable Waters Protection Rule (NWPR) went into effect in June 2020.
- The rule revised the definition of Water of the United States (WOTUS) to generally limit WOTUS to traditionally navigable waters (TNWs) and their perennial and intermittent tributaries.
- The definition excludes those waters with an ephemeral flow regime and an ephemeral segment can sever jurisdiction for perennial and intermittent waters in some cases.
- As a result, the definition left some 'wet' Arizona waters unprotected by a proactive federal permitting program; some of these waters are the Santa Fe Reservoir, Roper Lake, Watson Lake and Woods Canyon Lake.
- You likely recall that Governor Ducey supported these changes; in large part due to the belief that Arizona could craft a program to better protect important state waters - such as those listed above - than federal regulators in Washington.
- *Next we have Erin Jordan, Surface Water Quality Improvement Value Stream Manager*

Surface Water Protection Program

Protects Arizona's "Wet"
Waters

300+ waters will regain
protections

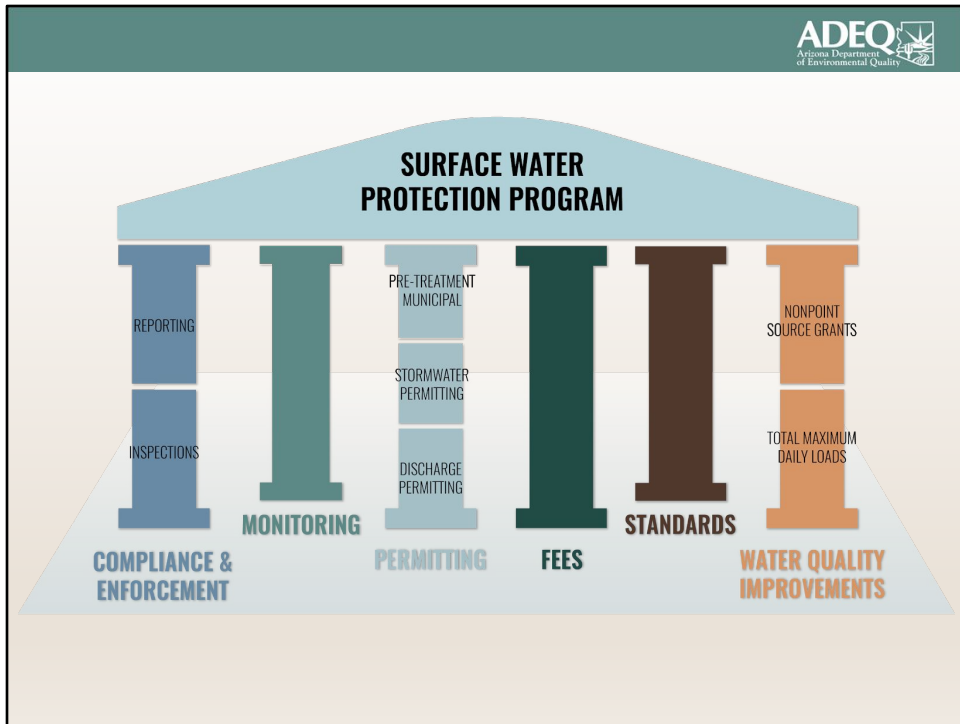
Leverages Arizona's
Pollutant Discharge
Elimination System
(AZPDES)



Erin Jordan

(Slow down! Pause after making a key point! Repeat/restate key points! Breath! Bring in levity when you are able!)

- Welcome!
- Now let's talk about the new state surface water protection program.
- To develop the program, ADEQ carried out 18 stakeholder meetings over 18 months with our effort culminating in House Bill 2691, passed by the legislature and signed by Governor Ducey during the last legislative session.
- The new program is primarily designed to protect many of those "wet" waters that are not currently covered by the federal rule.
- ADEQ estimate more than 300 or so water bodies regain protections under the new state program.
- *Beginning on September 29, the program will become effective.*



Erin Jordan

- The new program gives ADEQ the authority to issue permits to WOTUS and specific non-WOTUS waters on a Protected Surface Waters List or PSWL.
- The pillars of our existing Clean Water Act programs will be retained to protect these important state surface waters.
- *That said, let's talk about the Protected Surface Waters List (PSWL).*

Protected Surface Waters List (PSWL)

Published list of Arizona protected “wet” waters

SHALL

- 8 major rivers
- Drinking water sources
- Public water used for recreation

Shall NOT

- Ephemeral features
- Stormwater control features
- Groundwater
- Stock tanks
- Swimming pools
- Manmade pits
- Ditches

MAY

- Perennial and intermittent state waters

Erin Jordan

- There are three categories of waters identified by the new state program, the
 - ‘Shall’ list waters,
 - ‘Shall Not’ list waters,
 - and the ‘May’ list waters
- The “Shall” list waters include
 - The 8 major rivers and their perennial and intermittent tributaries. The rivers listed in the House Bill 2691 are the Bill Williams, Colorado, Gila, Little Colorado, Salt, San Pedro, Verde, Santa Cruz.
 - Drinking water sources
 - Public waters used for recreation and fish consumption
 - AND, all waters deemed WOTUS under the federal rule, which, as you know, can change over time.
- The “Shall Not” list waters are
 - Most Canals
 - Ephemeral segments of waters, except those in the 8 major rivers

- Ornamental lakes and ponds
 - Swimming pools, stock tanks, stormwater control features, groundwater
- The “May” list waters are any other state waters not included in the other two lists when “the economic, environmental and social benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list.”
- ***Please note, that this is what was approved by the Arizona state legislature. We cannot change the statutory requirements of the list.***

The Initial PSWL

List of waters to be protected prior to December 2022

Published by Oct 29, 2021

- Shall list waters
- Only limited changes to the list on ADEQ website

Amending the List

- Process to be establish in rule
- Include procedure for Director discretionary changes
- Must include public process
- Cost/Benefit analysis required

Erin Jordan

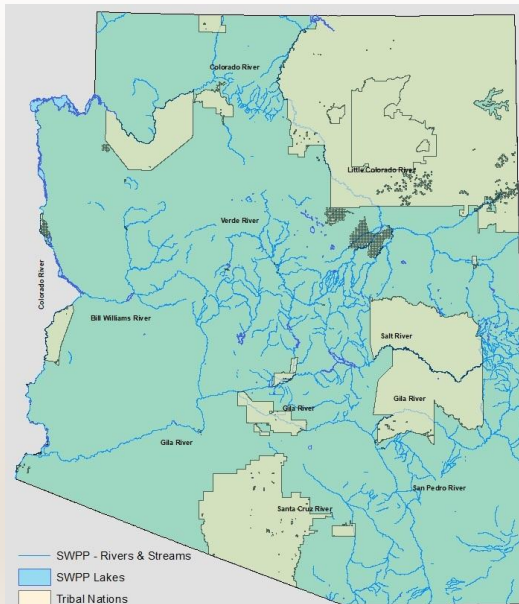
- ADEQ developed a DRAFT of the PSWL by reviewing all waters listed on Appendix B from the 2019 Triennial Review.
- We removed those waters which were Shall Not list waters, such as ephemeral segments.
- And, keep in mind, ADEQ scientists are engaged in an ongoing effort to review flow regime throughout the State.
- *As you know, knowledge of flow regimes could mean a water is on or off the PSWL.*

Current PSWL Map

www.azdeq.gov/SWPP

Comments &
Questions?

PSWL@azdeq.gov



Erin Jordan

- To view the draft PSWL, visit www.azdeq.gov/SWPP.
- I want to point out that the PSWL is based on the best available data today. I understand there may still be some uncertainty and questions, as well as credible data that we simply do not know about yet by which to determine jurisdictional status of waters. Your input is welcome. We have created an email address for questions on the PSWL and it is listed here on the slide; PSWL@azdeq.gov
- *Now I want to introduce, Jonathan Quinsey, a Legal Specialist for the ADEQ Water Quality Division, for implementation of the Surface Water Protection Program*

IMPLEMENTATION

Rulemaking and Schedule

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Jonathan Quinsey

- Welcome and thank you for attending!
- *Let's talk about the rulemakings required by the new program!*

Statutory Required Rulemaking

**Deadline: December
2022**

Water Quality Standards for
Arizona Protected Surface Waters

Protected Surface Waters List

List of impaired Arizona Surface
Waters

BMPs for Activities within a
Protected Surface Water

Not included in December 2022 deadline



Jonathan Quinsey

**(Slow down! Pause after making a key point! Repeat/restate key points! Breath!
Bring in levity when you are able!)**

- The Surface Water Protection Program can be broken down into 4 main categories that are listed on this slide.
- Within those 4 large rulemaking categories, some requirements to highlight for today:
 - ADEQ has the option to adopt arizona-specific water quality standards for Arizona protected waters that may be separate from those required by the federal government.
 - ADEQ must adopt procedures for determining when the Director can discretionarily add or remove some waters from the PSWL. As Erin mentioned before, director is required to take into account the environmental, economic, and social costs and benefits of adding or removing waters under this provision.
 - ADEQ must adopt best management practices for activities within the bed and banks of waters that materially impact non-WOTUS listed waters. Those BMPs will extend to activities conducted in non-WOTUS waters, only Some activities will not require BMPs, most notably some recharge project discharges

Farming and ranching activities

Some activities associated with drainage and irrigation ditches

NOTE: We can only implement the statute - not able to make changes to the decisions made by the legislature regarding epheremals.

Approach

- 1** Rulemaking Package
- 1** Technical Review Team
- 6** Technical White Papers
- 9** Virtual Stakeholder Meetings
- 16** Months to Complete



Jonathan Quinsey

This slide is an overview of the approach we'll take to the SWPP rulemaking

- ADEQ has received the rulemaking moratorium exemption from the Governor's Office on June 30th of this year.
- ADEQ will implement the 4 components as one rule package beginning in late August
- We have formed a Technical Review Team with people who have technical expertise in flow determinations, standards development and economic models
- ADEQ staff will work with the TRT to prepare 6 white papers which will form the basis for the decisions to be included in the rules.
- Each of the white papers will be made available to the public with an opportunity to review and comment
- We have planned virtual meetings throughout the process to keep stakeholders up to date
- *We will have limited time to complete the rulemaking. We will be moving fast and ask that you stay engaged and aware of deadlines.*

The “6” Papers

Justification for Rule Decisions

1. The Arizona Protected Surface Water List
2. Designated Uses and Standards Approach
3. Economic Model for Setting Standards
4. Economic Model for Listing Waters
5. Best Management Practices
6. State Water Quality Standards

Jonathan Quinsey

- These are the proposed topics for the 6 white papers
- A draft of paper will be released to the Technical Review Team before going to the public.
- The TRT will be co-chaired by our value stream managers, Erin Jordan and Justin Bern
- The plan is to release a new paper on a near monthly cadence
- The initial white papers will deal heavily with the process of making agency decisions, not necessarily the outcome. That is because..
- *ADEQ is a process obsessed agency. We believe that a good process = good results. Agreement on the process itself will help drive outcomes that all stakeholders can agree with.*

Initial Schedule

August 2021 – December 2022

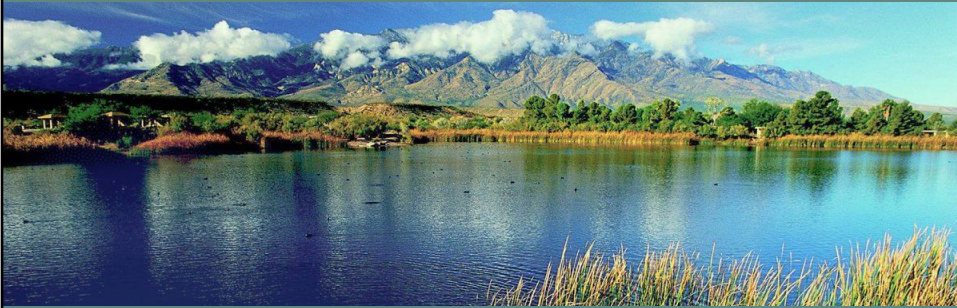
Surface Water Protection Program Rulemaking Timeline



Roper Lake State Park

Jonathan Quinsey

- Here is the general timeline for rulemaking. ADEQ expects the high-level stakeholder process to last until early 2022. We won't be releasing specific rulemaking language until then.
- *Let's go back to the SWPP Program Manager, David Lelsz for the Q and A on program Implementation*



Do you have any questions about SWPP implementation?

David Lelsz

(Slow down! Pause after making a key point! Repeat/restate key points! Breath! Bring in levity when you are able!)

- So if you do have questions about SWPP implementation, rulemaking etc, please use the Question tool now.
- If you have a question about your specific permit, please reach out to your permit team contact.
- *Also we want to focus on the SWPP and not what is not included in HB 2691*

For More Information:

Dr. David Lelsz
Program Manager

(602) 771-4651

Lelsz.David@azdeq.gov

<http://www.azdeq.gov/SWPP>

David Lelsz

- Thank you for taking time out of your day to meet with us on SWPP Implementation
- We hope to see each and every one of you at the next meeting
- *Introduce the evaluation slide*

Evaluation!

Webinar was a valuable use of my time

Clear and understandable information was presented

Information was useful and helps me better understand ADEQ's priorities

ADEQ has a good plan and are sufficiently addressing upcoming federal and state changes

These updates provide added value to stakeholders and should be continued

David Lelsz

- Auto email from GTW with survey questions sent at close of webinar to all participants.
- *Sign off and Thank You!*